IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6808 OF 2005

Shevanta Suresh Waghmare . .. Petitioner.

vs.

Sadashiv Devappa Waghmare

& Ors. .. Respondents.

Mr. Sandesh D. Patil for petitioner.

Dr. V.K. Choudhari for respondent no.1.

CORAM : S.U. KAMDAR, J.

DATE : 6th December, 2005.

P.C.:

. The order impugned in the present petition dated 18.8.2005 is refusing to grant condonation of delay of 35 days in filing appeal. Exhibit 49 initiated by the petitioner was for condonation of delay. However, in place of considering whether the ground is made out for condonation of delay or not the trial Court has purportedly held that on merits the petitioner has no case and, therefore, no sufficient cause is made out for condonation of delay. In my opinion, the merits of the matter is required to be decided at the hearing of the pending

appeal and not at the application stage for condonation of delay. In that view of the matter, the impugned order dated 18.8.2005 suffers from serious infirmity and, therefore, requires to be interfered with. The order dated 18.8.205 passed by the District Court, Sangli on Exhibit 49 is quashed and set aside. Misc. Civil Application No. 12 of 2004 for condonation of delay of 35 days is granted. The District Court, Sangli, is directed to hear and decide the pending appeal on its own merits and determine the contentions without being any way influenced by the order dated 18.8.2005 or the present order in the present writ petition. Petition made absolute accordingly. Petition is directed to pay costs of the proceedings for condonation of delay and the present writ petition quantified at Rs. 5,000/- to the respondent no. 1.